

In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 10209 of 2004

Date of Decision: September 26, 2006

Smt. Om Pati

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI**

PRESENT: Mrs. Daya Chaudhary, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

It has become fashion of the day for the respondent State to force the litigant to approach the Court in every case without caring to examine the controversy which has been settled by the judicial pronouncements. It poses a question for the respondents to answer as to whether the principles of law in similar facts are to be every time reiterated by the Court or such principles should serve the respondent State as guidelines for deciding the issues raised before it. The present case presents the same predicament as is experienced day

in and day out. The petitioner who is a widow of an employee of the respondents has filed the instant petition under Article 226 of the Constitution with a prayer for quashing order dated 24.12.2003 (P-4) declining her claim for grant of family pension. It has further been prayed that direction be issued to the respondents to reckon the service rendered by her husband from 1.10.1964 to 1.4.1972 as qualifying service for the grant of family pension, as has been settled by a Division Bench of this Court in the case of **Rati Ram v. State of Haryana** (C.W.P. No. 4857 of 1994, decided on 24.4.1995).

The undisputed facts are that the husband of the petitioner was appointed as Panchayat Secretary at Hisar Block-I with effect from 1.10.1964. He was put under the control of Gram Panchayat initially. However, after the amendment of Panchayat Act in 1971 he was treated as an employee of the Panchayat Samiti and was placed under its control. The nomenclature of the post held by him was also changed and it came to be designated as Gram Sachiv. A decision was taken to absorb the then existing Gram Sachivs' in the Government service and accordingly the candidature of the husband of the petitioner was considered by a Committee constituted for that purpose. On the recommendation made by the Committee the husband of the petitioner was posted as Gram Sachiv under the Government with effect from 1.4.1972. After about four months he unfortunately died on 24.7.1972.

The respondent State has been issuing instructions from time to time for grant of pensionary benefits to those employees who have been working in the erstwhile Zila Parishads/Panchayat

Samities. A set of instructions dated 22.11.1991 was also issued, which has been placed on record as Annexure P-1. According to the instructions, the Government has granted benefits of previous service rendered in Zila Parishads/Panchayat Samities to its employees towards pension/family pension/gratuity from their date of appointment in the erstwhile District Boards/Zila Parishads/Panchayat Samities wherever such employee was later absorbed in the Government service.

The petitioner sent a representation for grant of family pension along with an affidavit dated 31.7.2002 for grant of family pension (P-2 and P-3). On 24.12.2003, respondent No. 2 - the Director Panchayats after seeking advice of the Finance Department conveyed to respondent No. 3 - the Block Development and Panchayat Officer, Hisar, that the claim of the petitioner for family pension was not admissible as per rules because the service rendered by her husband under the Government was only three months and that too on ad hoc basis. A copy of the order dated 24.12.2003 has been placed on record as Annexure P-4.

The petitioner has placed reliance for the grant of family pension to her on the Family Pension Scheme, 1964, which has come into force from 1.7.1964. The aforementioned Scheme is claimed to be applicable to all employees on pensionable establishments, temporary or permanent, who were in service on 1.7.1964 or were recruited thereafter. She has placed firm reliance on Clauses 3 and 4 of the Scheme to contend that the impugned order dated 24.12.2003 (P-4) is wholly illegal and is liable to be quashed. The petitioner has

also placed reliance on a Division Bench judgment of this Court rendered in the case of Rati Ram (supra) (P-5).

The respondent State has taken a totally untenable stand. It has been asserted in the written statement that the service rendered by the husband of the petitioner was only three months under the Government on ad hoc basis which would not be sufficient to entitle his dependent widow like the petitioner to claim family pension. The respondents have also raised a frivolous objection that disputed question of facts have been raised and the petitioner has no locus standi and valid cause of action to file the instant petition. It has further been claimed that the petitioner could have claimed family pension only if the deceased had rendered 10 years satisfactory service in a Government department. In respect of the Division Bench judgment of this Court in Rati Ram's case (supra) it has been averred that it was not applicable to the facts and circumstances of the case and accordingly the petitioner is not entitled to grant of family pension.

Having heard the learned counsel for the parties, we find that there is hardly any room for the respondents to take the stand that the earlier service rendered by the husband of the petitioner from 1.10.1964 till 1.4.1972 was not qualifying service for the grant of family pension. The question of counting the aforementioned service as qualifying service is no longer res-integra and this Court by taking into consideration the circular dated 22.11.1991 has already opined in favour of the petitioner. A Division Bench of this Court in Rati Ram's case (supra) has categorically held as under:-

“ Circular Annexure P-4 shows that the Government had taken a decision to count the service rendered by the employees with the District Boards, Zila Parishads and Panchayat Samitis towards pension etc. from their date of appointment in these bodies. This circular does not require that a person must have remained posted with Panchayat Samiti through the period of his service. Therefore, if in a case like that of the petitioner the employee was posted in a Gram Panchayat while holding an appointment under the Panchayat Samiti, benefit of total service cannot be denied for the purpose of pension etc. In taking a contrary view the respondents have committed a patent illegality. Narrow interpretation sought to be placed on the circular dated 22.11.1991 is not at all justified because such an interpretation would lead to anomalous results. Out of the two employees appointed in the service of the Panchayat Samiti one may be given benefit of total service for the purpose of pension because he may have physically served the Panchayat Samiti and the other will be deprived of that benefit only on the ground that he was asked to serve some other body like the Gram Panchayat. In our opinion, there is no justification to adopt such a narrow interpretation of the circular dated 22.11.1991.”

The Division Bench further opined after referring to the judgment of Hon'ble the Supreme Court that in any case the service

rendered by an employee under the Panchayat Act would constitute civil service and went on to observe as under:-

“ We may also refer to two decisions of the Supreme Court. In Mathuradas Mohan Lal Kadia and others Vs. S.D. Munshaw and others AIR 1984 SC 53 their Lordships of the Supreme Court declared that the employees of the Panchayats constituted under the Panchayat Act held civil posts and the service under the Panchayat Act is civil service. This decision was rendered by the Constitution Bench of the Supreme Court. But as is apparent from perusal of the subsequent judgment in State of Gujarat and another Vs. Raman Lal Keshav Lal Soni and others AIR 1984 SC 161, the aforesaid judgment in Mathuradas's case (supra) was set aside on an application filed by the State of Gujarat. In Raman Lal's case (supra) another Constitution Bench of the Supreme Court examined the matter and held that the members of the Gujarat Panchayat Service are Government servants.”

The aforementioned statement of law made by the learned Division Bench of this Court defies any ignorance on the part of the respondent State. It is amazing that brushing aside the view already expressed by the Division Bench, the respondent State has adopted an absolutely undesirable and impertinent stand in the written statement. This approach adopted by the respondent State is causing unnecessary rush in the courts and encourage apathy on the

part of bureaucracy. Such an apathy has to be completely discouraged and the law as laid down by this Court upheld by Hon'ble the Supreme Court has to be followed, applied and implemented. The respondent State cannot expect this Court to express opinion in every case where similar facts situation is involved as is the position in the present case. If no one in the bureaucracy is prepared to take responsibility of stating honestly and fairly that the facts of the case are covered by the judgment of this Court or the Supreme Court then it is a sad day because it unnecessarily clog the working of the Courts by disposing those cases which are required to be taken care of by the respondent State and its executives.

In view of the above, we allow this writ petition and set aside the impugned order dated 24.12.2003 (P-4) by declaring the same to be illegal. Accordingly, the respondents are directed to calculate the family pension of the petitioner by taking into account the whole service of her husband rendered from 1.10.1964 to 24.7.1972. The family pension shall be released to the petitioner within a period of two months from the date of receipt of certified copy of this order. In view of the law laid down by Hon'ble the Supreme Court in the case of **S.K. Mastan Bee v. General Manager, South Central Railway, (2003) 1 SCC 183**, the arrears shall be paid to the petitioner from the date arrears were due till the date of its payment within the aforementioned period. The respondents shall keep on paying to the petitioner the family pension for life. If the needful is not done within a period of two months from the date of receipt of certified copy of this order either from this Court or from

the petitioner then the petitioner shall be entitled to interest on the arrears @ 6% per annum from the date payment was due till the date of actual payment. The petitioner is also held entitled to have her costs, which we determine at Rs. 5,000/-.

The writ petition stands disposed of in the above terms.

Before parting we hope and trust that the respondent State would take some corrective steps in view of our observation made in this judgment because we are sure that if suggested approach is followed then it would advance the Administration of Justice and would also infuse the sense of responsibility in those who are entrusted with the duty to discharge such like functions in accordance with law. If need be, necessary instructions in that regard may be issued by the worthy Chief Secretary. A copy of this judgment be handed over to Mr. Harish Rathee, Senior Deputy Advocate General, Haryana, for onward transmission of the same to the Chief Secretary to Government of Haryana, for taking appropriate necessary action.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)
JUDGE

September 26, 2006

Pk Kapoor

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